

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

THIRPLUS MOOSE,

Petitioner,

v.

WARDEN G. ROSALES,

Respondent.

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1:23-CV-546-RP

ORDER

Before the Court is Petitioner Thirplus Moose’s (“Moose”) Petition Under 28 U.S.C. § 2241, (Dkt. 1), and Respondent’s Motion to Dismiss, (Dkt. 9). The case was referred to United States Magistrate Judge Mark Lane for findings and recommendations, pursuant to 28 U.S.C. § 636(b). Judge Lane filed his report and recommendation on September 12, 2023. (Dkt. 10). In his report and recommendation, Judge Lane recommends that the Court grant Respondent’s motion and dismiss Moose’s petition as it relates to wrongful conviction which generally should be addressed in a § 2255 petition. (*Id.* at 5–6). If Moose chooses to file a § 2255 petition, Moose must file it with the sentencing court, the Western District of Missouri. Because the Court lacks jurisdiction to hear his § 2255 petition, the Court should grant the motion to dismiss and dismiss Moose’s § 2241 petition. As of the date of this order, Moose has not filed any objections to the report and recommendation.

Pursuant to 28 U.S.C. § 636(b), a party may serve and file specific, written objections to a magistrate judge’s proposed findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure de novo review by the district court. When no objections are timely filed, a district court can review the magistrate’s report and recommendation for clear error. *See* Fed. R. Civ. P. 72 advisory committee’s note (“When no

timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

Because no party has filed timely objections, the Court reviews the report and recommendation for clear error. Having done so and finding no clear error, the Court accepts and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the Report and Recommendation of the United States Magistrate Judge, (Dkt. 10), is **ADOPTED. IT IS ORDERED** that Respondent’s Motion to Dismiss, (Dkt. 9), is **GRANTED**.

IT IS FURTHER ORDERED that Moose’s Petition Under 28 U.S.C. § 2241, (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

SIGNED on November 7, 2023.

A handwritten signature in blue ink, appearing to read "R. Pitman", with a horizontal line extending to the right.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE